CHARLES et al. *v.* CHARLES.

Sept. 16, 1920.

[104 S. E. 823.]

Reformation of Instruments (§ 45 (4)*)—Placing Exception in Warranty Rather than Granting Clause Not Shown a Mistake.—Evidence in suit to reform a deed *held* not to clearly, convincingly, and satisfactorily show that it was not intended to convey all the underlying coal owned by the grantors, and that the exception in the warranty of half of the underlying coal was placed there, rather than in the granting clause, by mistake; the reason for the exception being stated that half of the coal had been sold, and it having been thought that the grantors owned only half of it.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 903, et seq.]

Appeal from Circuit Court, Buchanan County.

Suit by D. M. Charles and another against J. C. Charles. Bill dismissed, and complainants appeal. Affirmed.

W. A. Daugherty, of Grundy, for appellants.

A. A. Skeen, of Clintwood, for appellee.

WATSON *v.* MITCHELL.

Sept. 16, 1920.

[104 S. E. 825.]

1. Specific Performance (§ 120*)—Evidence of Understanding between Vendor and Bidders Competing with Purchaser, as to Property Included, Admissible.—In an action for specific performance of contract selling at auction, evidence of competing bidders as to their understanding with vendor that, if the property brought a certain amount, a cannery lot would be included, was admissible to show vendor's intention.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 624, 708, et seq.]

2. Evidence (§ 122 (8)*)—Conversation between Vendor and Bidders as to Inducements Offered Admissible as Res Gestæ.—In an action for specific performance of a land sale contract, in the absence of deceit or fraud upon innocent persons, vendor's conversation with bidders as to what would be included if a certain price was bid is a part of the res gestæ, and any promises held out to

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

prospective purchasers as inducements to bid would control, even though controverted by the auctioneer.

[Ed. Note.--For other cases, see 12 Va.-W. Va. Enc. Dig. 708, et seq.]

3. Specific Performance (§ 121 (9)*)—Evidence Held to Show Cannery Lot Included.—In a suit for specific performance of a contract for the sale of land, evidence *held* to sustain the purchaser's contention that a cannery lot was included.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 624, et seq.]

4. Appeal and Error (§ 1152*)—Decree Modified, by Accepting and Reserving Lessee's Rights in a Part of Property.—A decree for specific performance, stating the effect of a deed to be to divest vendor of legal title and all interest, and to invest the purchaser therewith, will be amended by a recital excepting and reserving the rights of a lessee in an included cannery lot under an unexpired lease, notwithstanding lessee's rights could not be affected by this litigation.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 696, et seq.]

Appeal from Circuit Court, Bedford County.

Suit by W. O. Mitchell against S. R. Watson. Judgment for plaintiff, and defendant appeals. Amended and affirmed.

S. S. Lambeth, Jr., of Bedford City, for appellant.

Willis, Adams & Hunter, of Roanoke, for appellee.

ROSE *v.* AGEE et al.

Nov. 18, 1920.

[104 S. E. 827.]

1. Boundaries (§ 3 (9)*)—Designation of Acreage Must Yield to Definite Boundaries.—A designation of acreage in a deed must yield to definite boundaries in determining what land was conveyed.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 398, 427 et seq.]

2. Ejectment (§ 13*)—Equitable Title Will Not Support.—Plaintiff who received only an equitable title from her predecessor cannot maintain action of ejectment.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 883.]

3. Estoppel (§ 27 (2)*)—Plaintiff Estopped by Covenants in Predecessor's Deed to Defendants to Deny their Title.—Where, if plaintiff's predecessor secured legal title, so that plaintiff can maintain action of ejectment, he got it from another person with a court com-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.